



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2013

Ms. Rachel L. Lindsay
Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2013-21930

Dear Ms. Lindsay:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 508730 (McKinney ORR# 10-8469).

The City of McKinney (the "city"), which you represent, received a request for information related to a specified incident involving a named individual. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, where it is demonstrated that the requestor knows the identity of the individual involved, as well

as the nature of certain incidents, the entire report must be withheld to protect the individual's privacy.

In this instance, the request reveals that the requestor knows the identity of the individual involved as well as the nature of the information in the submitted report. Therefore, withholding only the individual's identity or certain details of the incident from the requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the city must withhold the submitted report in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

However, we note the requestor is an investigator with the Child Protective Services Division of the Texas Department of Family and Protective Services ("DFPS"). Section 411.114 of the Government Code states in pertinent part:

(a)(2) The [DFPS] shall obtain from the [Department of Public Safety ("DPS")] criminal history record information ["CHRI"] maintained by the [DPS] that relates to a person who is:

...

(I) an alleged perpetrator in a report the [DFPS] receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct[.]

...

(4) Subject to Section 411.087, the [DFPS] is entitled to:

...

(B) obtain from any other criminal justice agency in this state [CHRI] maintained by that criminal justice agency that relates to a person described by Subdivision (2) or (3).

Gov't Code § 411.114(a)(2)(I), (4)(B). CHRI consists of "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Thus, these provisions may grant the DFPS investigator a right of access to CHRI in the submitted information.

In this case, the requestor indicates the information is being requested for the purpose of a Child Protective Services investigation but does not specifically state who is being investigated or whether that person is an alleged perpetrator in a DFPS report of abuse or neglect of a child. Thus, we are unable to conclude that section 411.114 of the Government Code gives the requestor a right of access to any of the requested information, and we must rule conditionally.

Therefore, if the requestor is investigating the named individual as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the requestor is authorized to obtain criminal history record information from the city pursuant to section 411.114 of the Government Code. Although this information is confidential under common-law privacy, a statutory right of access prevails over common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the city must make available to the requestor the criminal history record information from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See Open Records Decision No. 451* (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the city must withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

However, if the requestor is not investigating the named individual as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the CHRI is not subject to release to this requestor under section 411.114. In that case, the submitted information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

To summarize: If the requestor is investigating the named individual as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the city must (1) make available to the requestor, pursuant to section 411.114 of the Government Code, the criminal history record information from the documents that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions; and (2) withhold the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. However, if the requestor

is not investigating the named individual as an alleged perpetrator in a DFPS report of abuse or neglect of a child, the city must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 508730

Enc. Submitted documents

c: Requestor
(w/o enclosures)